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ATTORNEY FOR APPELLANT:

JASON A. CHILDERS
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MARA MCCABE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DUANE M. REDDING,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A04-0701-CR-52

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0309-FA-270

September 11, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Duane M. Redding appeals his conviction for Child Molesting,¹ a class A felony, arguing that the evidence is insufficient to support the conviction. Redding also contends that the trial court erroneously concluded that the sole aggravator outweighed the sole mitigator and that the fifty-year sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

In the summer of 2000 or 2001, six-year-old M.F. spent the night at the apartment of her mother's friend, Laura Gaus, in Anderson. Redding also stayed at Gaus's apartment that evening. While M.F. was asleep in the bedroom, Redding entered the room and undressed. He got in bed with and laid on top of M.F., who was "really scared" and felt something hard against her leg. Tr. p. 134. M.F. rolled out from underneath Redding and went into the bathroom. Redding followed her. M.F. again attempted to escape from Redding, leaving the bathroom and reentering the bedroom. He followed her and she noticed that he was wearing a condom. Redding again laid on top of M.F., who was still wearing her nightgown and underwear. She felt him place his "private part in her private part" and later testified that it "hurt really, really bad." Id. at 144-45. Redding threatened M.F., telling her not to tell anyone or he would hurt her family. M.F. did not tell anyone about the incident until 2003, when she was with her father and brother and encountered Redding in an Anderson restaurant.

¹ Ind. Code § 35-42-4-3.

On September 23, 2003, the State charged Redding with class A felony child molesting. A jury trial was held beginning on April 12, 2005. Redding was convicted and sentenced to fifty years in prison. Redding appealed and a panel of this court reversed, holding that Redding should have been allowed to rebut the inference that he caused M.F.'s injuries by cross-examining one of the State's expert witnesses and M.F. about a prior molestation of M.F. by a man named Paul Degraffenreid. Redding v. State, 844 N.E.2d 1067 (Ind. Ct. App. 2006). We remanded the cause for a new trial. Id. at 1071.

Redding's second jury trial commenced on December 5, 2006. Pursuant to this court's instruction, the trial court admitted evidence of the prior molestation of M.F. by Degraffenreid. M.F. testified, without equivocation, that Degraffenreid molested her prior to the time Redding did. She also testified that Degraffenreid molested her with his fingers and that the two men had molested her in different ways. She identified both men in a photo array.

On March 6, 2003, Dr. Roberta Hibbard, a pediatrician specializing in the treatment of sexually abused children, examined M.F. following a referral from the Anderson Police Department. Dr. Hibbard noted that M.F.'s hymenal tissue was "somewhat abnormal and concerning." Tr. p. 305. She testified that her finding was consistent with penile and digital penetration, but was not proof of such an injury, and that there was no way to determine when the injury had occurred.

The jury viewed the videotaped deposition of Dr. Ron Beahm, M.F.'s pediatrician, who examined M.F. on September 28, 2000, for a prekindergarten physical and noted that

her genital examination was normal. He again examined her on November 11, 2001, when M.F. was complaining of vaginal pain, redness, and pain with urination. Dr. Beahm noted that M.F.'s vaginal area was red and foul smelling and that her hymen was "wide open" or nonexistent. State's Ex. 7. Dr. Beahm did not conclude that M.F.'s hymenal condition indicated abuse.

On December 8, 2006, the jury convicted Redding of class A felony child molesting. On December 22, 2006, following a hearing, the trial court found one aggravator—Redding's prior criminal history, which includes five felony convictions—and one mitigator—Redding's elderly parents needed his assistance. Concluding that the aggravator outweighed the mitigator, the trial court sentenced Redding to the maximum term of fifty years imprisonment. Redding now appeals.

DISCUSSION AND DECISION

I. Sufficiency

Redding first argues that there is insufficient evidence supporting his conviction. Upon a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Wright v. State, 828 N.E.2d 904, 906 (Ind. Ct. App. 2004). Instead, we examine only the evidence and reasonable inferences that may be drawn therefrom in support of the verdict. Id. We will reverse only if no rational factfinder could have found the defendant guilty beyond a reasonable doubt based on the probative evidence and inferences. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

To convict Redding of class A felony child molesting, the State was required to prove beyond a reasonable doubt that Redding, who was at least twenty-one years of age, performed sexual intercourse on M.F., who was a child under fourteen years of age. I.C. § 35-42-4-3(a)(1). A conviction for child molesting may rest solely upon the uncorroborated testimony of the victim. McCoy v. State, 856 N.E.2d 1259, 1262 (Ind. Ct. App. 2006).

Redding's sole argument regarding sufficiency rests on the incredible dubiousity rule. It is the unique province of the jury to assess witness credibility. Gantt v. State, 825 N.E.2d 874, 878 (Ind. Ct. App. 2005). We will impinge upon that province only when the conviction is supported solely by the inherently contradictory testimony of one witness and there is a complete lack of circumstantial evidence of the defendant's guilt. Id. Incredibly dubious or inherently improbable testimony "is that which runs counter to human experience, and which no reasonable person could believe." Campbell v. State, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000).

Initially, we observe that the incredible dubiousity rule does not apply to this case, inasmuch as there is circumstantial evidence of Redding's guilt in addition to M.F.'s testimony. Specifically, Dr. Hibbard testified that M.F.'s hymenal tissue was abnormal and concerning and that it suggested that penetration had occurred. Additionally, Dr. Beahm attested that when M.F. came to him complaining of vaginal pain, he noticed that her hymen was completely gone, although her genital exam had been normal when he had examined her a year prior to that time. Although neither physician could testify that they were absolutely

certain that M.F.’s genital condition had been caused by Redding’s actions, their testimony is circumstantial evidence of his guilt. Consequently, the incredible dubiousity rule does not apply.

That determination notwithstanding, we will briefly address Redding’s contention that M.F.’s testimony was inherently contradictory. He argues that her recollection that she was still wearing her nightgown and underpants directly contradicts her testimony that penetration occurred. As aptly put by the State, however, “[Redding’s] act of forced sexual intercourse on a six-year-old child was not an occasion of solicitous relations between willing partners. [Redding], a forty-year-old man, most certainly could have forced his penis into the vagina of a six-year-old girl despite the presence of her underpants.” Appellee’s Br. p. 8. We agree and do not find M.F.’s testimony to be inherently contradictory. To the extent that Redding further attacks the credibility of M.F. and the conclusions of Drs. Hibbard and Beahm, he is inviting us to reweigh the evidence and judge witness credibility—practices in which we do not engage when evaluating the sufficiency of the evidence supporting a conviction. Given the testimony of M.F., Dr. Hibbard, and Dr. Beahm, we find that the State presented sufficient evidence to sustain Redding’s conviction.

II. Sentencing

Redding next contends that the maximum fifty-year sentence imposed by the trial court was erroneous and inappropriate. Sentencing determinations are within the sound

discretion of the trial court, and we will only reverse for an abuse of discretion.² Krumm v. State, 793 N.E.2d 1170, 1186 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id. In a sentencing statement, a trial court must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). A trial court is not obligated to weigh a mitigating factor as heavily as the defendant requests. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002).

Here, the trial court found one aggravator and one mitigator. Redding does not dispute the propriety of either factor; he merely contends that the trial court gave too much weight to the aggravator and not enough to the mitigator. As to the mitigating circumstance—Redding's elderly parents who needed his assistance—we merely note, again, that the trial court was not obligated to weigh this as heavily as he wished. Id. And the sole aggravating factor was Redding's lengthy and sobering prior criminal history, which consists of the following convictions that began in 1986 and continued, virtually unabated, until the State charged him in the present matter in 2003: class C felony forgery, three separate convictions for driving while suspended, two separate convictions for class C felony escape, resisting law enforcement, check deception, class A misdemeanor battery, class C felony nonsupport of a dependent child, class D felony possession of cocaine, class A misdemeanor

² On April 25, 2005, the General Assembly amended Indiana's felony sentencing statutes. Redding, however, committed the instant offense in 2000 or 2001, years before the effective date of the amended sentencing

operating a vehicle while intoxicated, three separate convictions for public intoxication, and class C felony failure to return to lawful detention. Additionally, Redding has violated probation and work release on multiple occasions and has been found in direct contempt of court. Given the depth and breadth of Redding's criminal history, we cannot say that the trial court abused its discretion by finding that the aggravator outweighed the mitigator.

Finally, Redding argues that the sentence is inappropriate in light of the nature of the offense and his character. Ind. Appellate Rule 7(B). As to the nature of the offense, Redding forced a six-year-old child to submit to sexual intercourse. Although she twice tried to escape, she was eventually forced to succumb to his relentless pursuit of her from room to room. M.F. suffered an injury to her genitals as a result of Redding's actions. Under these circumstances, the nature of the offense does not aid Redding's inappropriateness argument.

Turning to Redding's character, we again observe his long, varied, and grim history of contacts with the criminal justice system. It is apparent that Redding has no respect for the rule of law or his fellow citizens. He has been afforded the privilege of probation on numerous occasions, but has failed to learn from his past mistakes. Under these circumstances, we cannot say that the maximum fifty-year sentence imposed by the trial court was inappropriate in light of the nature of the offense and Redding's character.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.

scheme. Consequently, we will apply the former version of the statute. Gutermuth v. State, 868 N.E.2d 427, 432 n.4 (Ind. 2007).